

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-319
Table of Allotments,)	RM-10984
FM Broadcast Stations.)	
(Coal Run, Kentucky and Clinchco, Virginia))	
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: March 16, 2007

Released: March 20, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed rule Making and Order to Show Cause*¹ issued at the request of East Kentucky Broadcasting Corporation ("East Kentucky"), license of Station WPKE-FM, Channel 276A, Coal Run, Kentucky. East Kentucky filed Comments and Reply Comments. Dickenson County Broadcasting Corporation ("Dickenson County"), licensee of Station WDIC-FM, Channel 221A, Clinchco, Virginia, filed a Response to Notice of Proposed Rule Making and Order to Show Cause as well as Reply Comments. For the reasons discussed below, we deny East Kentucky's proposal.

2. The *Notice* proposed the substitution of Channel 221C3 for Channel 276A at Coal Run and modification of the Station WPKE-FM license to specify operation on Channel 221C3. In order to accommodate this upgrade, the *Notice* also proposed the substitution of Channel 276A for Channel 221A at Clinchco, Virginia, and modification of the Station WDIC-FM license to specify operation on Channel 276A.² To this end, we issued an order to Show Cause directed to Dickenson County to show cause why its license should not be modified to accommodate the proposed Station WPKE-FM upgrade.

3. In response to the Order to Show Cause, Dickenson County stated that there is a major terrain obstruction between Coal Run and the proposed reference site that would preclude 70dBu service to Coal Run in contravention of Section 73.315 (b) of the rules.³ In its supporting engineering exhibit, using a 3 second terrain data base, Dickenson County identified a major

¹ *Coal Run Kentucky, et al.*, Notice of Proposed Rule Making and Order to Show Cause, 19 FCC Rcd 15395 (MB 2004) ("*Notice*").

² As stated in the *Notice*, the proposed Channel 221C3 upgrade at Coal Run is mutually exclusive with its Channel 276A authorization because the accommodating substitution at Clinchco is an incompatible channel swap in that there are no alternative channels for either community. See *Jackson and Salyersville*, Report and Order, 17 FCC Rcd 4662, 4666 n. 2 (MMB 2002).

³ 47 C.F.R. § 73.315 (b).

obstruction located 10.57 kilometers (6.57 miles) from the proposed reference site.⁴ Even with the proposed tower of 209 meters (686 feet), this mountain peak would preclude the required line-of-sight clearance from its originally proposed site using a 1,000-foot tower. In addition, East Kentucky has suggested two alternate sites which, according to East Kentucky, would enable a Class C3 allotment at Coal Run to comply with Section 73.315(b).

4. We deny the proposed upgrade. A proposed transmitter site must be available and in compliance with Commission technical requirements.⁵ While we presume that the proposed site is technically feasible and available, that presumption is rebuttable.⁶ Our engineering study regarding the originally proposed site (37-23-57 NL and 82-23-42 WL) has confirmed that there is, in fact, a major terrain obstruction 10.4 (6.5 miles) from the proposed transmitter site. Maximum Class C3 facilities are an effective radiated power of 25 kilowatts at a height above average terrain of 100 meters (328 feet). In this instance, a tower of approximately 50 meters (160 feet) above ground would result in a height above average terrain of 100 meters. Even assuming FAA clearance, it would be necessary to construct a tower of approximately 173 meters (570 feet) above ground to achieve a height above average terrain of 224 meters to overcome this terrain obstruction. Increasing the height above average terrain requires a reduction in effective radiated power in order to ensure that a station is not operating in excess of maximum permissible facilities. In this situation, it would be necessary to reduce effective radiated power to 5.1 kilowatts. This would be in contravention of Section 73.211(b)(2)(iv) of the rules which requires that the minimum effective radiated power for a Class C3 facility be not less than 6 kilowatts.⁷

5. The two alternate transmitter sites suggested by East Kentucky are also technically defective. The first alternate site (37-23-24 NL and 82-29-14 WL) is short-spaced to Station WZAQ, Channel 222A, Louisa, Kentucky, and Station WWJD, Channel 219C3, Pippa Passes, Kentucky, in contravention of Section 73.207 (b) of the rules.⁸ In addition, using the 3 second terrain database, there is a major terrain obstruction located 4.9 kilometers (3.04 miles) from the proposed transmitter site. Finally, in regard to the second alternate site (37-23-24 NL and 82-24-04 WL), our engineering study has identified multiple terrain obstructions preventing the requisite line-of-site and 70dBu coverage of Cole Run. Using the 30 second terrain database, there is a major terrain obstruction located 10.5 kilometers (6.5 miles) from the proposed transmitter site, and using the 3 second terrain database, we have identified an additional major terrain obstructions located 12.6 kilometers (7.8 miles) and 15.57 kilometers (9.7 miles) from the proposed site. In this regard, East Kentucky has suggested that these terrain obstructions could be overcome with a "1,000 foot tower." As discussed earlier with respect to the originally proposed transmitter site, such a tower would require FAA clearance and a reduction in effective radiated power to a level below the 6 kilowatt minimum for a Class C3 station.

6. Accordingly, IT IS ORDERED, That the petition for rule making filed by East Kentucky Broadcasting Corp. IS DENIED.

⁴ The 3 second terrain database provides a more detailed terrain depiction than the 30 second terrain database referenced in Section 73.312 (d) of the rules. Section 73.312 (d) permits the use of the 30 second terrain database, or better, in a disputed case.

⁵ See *Mt. Wilson FM Broadcasters v. FCC*, 884 F. 2d 1462 (D.C. Cir. 1989)

⁶ See *San Clemente, California*, 3 FCC Rcd 6728 (MMB 1988), *appeal dismissed sub nom. Mount Wilson FM Broadcasters, Inc. v. FCC*, *supra*.

⁷ 47 C.F.R. § 73.211(b) (2) (iv).

⁸ 47 C.F.R. § 73.207 (b).

7. IT IS FURTHER ORDERED, That this proceeding is TERMINATED.
8. This document is not subject to the Congressional Review Act. The Commission, is, therefore, not required to submit a copy of this Report and Order to Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A) because the proposed rule is dismissed.
9. For additional information concerning this proceeding, contact Robert Hayne, Audio Division, Media Bureau (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau